IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 165 of 1993

For Approval and Signature:

THE HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Petitioner(s)

Versus

SANJAY OIL CAKE INDUST. - Respondent(s)

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Appearance :

MR B.B.NAYAK for Petitioner No(s).: 1.

MRS.SWATI SOPARKAR FOR MR SN SOPARKAR for Respondent No(s).: 1.

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CORAM :THE HON'BLE MR.JUSTICE D.A.MEHTA
HON'BLE MS.JUSTICE H.N.DEVANI

Date : 22/06/2005

ORAL JUDGMENT

(Per : THE HON'BLE MR.JUSTICE D.A.MEHTA)

1. The Income Tax Appellate Tribunal , Ahmedabad Bench 'B' has drawn up a consolidated statement of case in relation to questions referred at the instance of the Commissioner of Income Tax and the assessee under section 256(2) of the Income Tax Act, 1961 (the Act).

At the instance of Revenue.

> "Whether the Appellate Tribunal is right in law and on facts in deleting the addition of Rs.54,23,457 made on account of suppressed production of 28284 tins of oil and also Rs.12,44,130/- on account of suppression of sale price of 678 tons of oil cakes outside the books of accounts ?"

At the instance of assessee.

> "1. Whether in the facts and in the circumstances of the case the Tribunal was justified in rejecting the evidence in the form of certificates and statements filed during the course of assessment proceedings.
>
> 2. Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that the purchases of tin plate for manufacture of tins were not made on the basis of weight but were made on the basis of number of component

parts ?

3. Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that the value of 28,284 tins was to be added in the income of the assessee ?

4. Whether on the facts and in the circumstances of the case there was evidence to justify the finding of the Tribunal that there was suppression of production of 28284 tins by the assessee?

5. Whether on the facts and in the circumstances of the case the Tribunal was justified in rejecting the evidence led by the appellant in support of its contention that the purchases were made on the basis of weight and not on the basis of numbers?

6. Whether on the facts and in the circumstances of the case the conclusions drawn by the Tribunal against the appellant are perverse, in that no reasonable person could have reached these conclusion on the basis of the evidence on the record of the case ?"

2. The Assessment Year is 1982-83 and the relevant accounting period is S.Y.2037. The assessee, a registered firm, carries on business as oil mill and solvent extraction plant with Factory and Head Office at Jamnagar and Branch Office at

Bombay.

3. The facts relatable to the question at the instance of the revenue are that :

3.1Asssessing Officer on the footing that the assessee had manufactured 28284 tins in excess of the number reflected by the Books of Account came to the conclusion that as each tin contains 16 kgs. of oil the total quantity of oil would work out to about 452.5 tons. Applying the multiplier of Rs.205/-, which was the average selling price of one tin, total selling price of 28284 tins of oil was worked out at Rs.57,08,220/-. The Assessing Officer held that this amount was to be added to the profits of the assessee as concealed income. However, as separate addition on account of undisclosed income from suppressed production of tins was worked out at Rs.3,74,763/- he made an addition of Rs.54,23,457/- being the sale price of suppressed production of oil.

3.2 Further addition to the tune of Rs.12,44,130/- was made on account of suppressed sales of oil cakes.

The basis for arriving at this figure was that normal yield of oil would be about 30% and that of oil cake about 45%. Accordingly, in the process of production of unaccounted quantity of oil 678 tonnes of oil cake would have been produced according to the Assessing Officer. Applying the average price of Rs.1,835/- per ton of oil cake to 678 tonnes the aforesaid figure of Rs.12,44,130/- has been arrived at and added as unaccounted sales of oil cakes.

4. The assessee carried the matter in appeal before CIT (Appeals) who deleted both the additions vide his order dated 4.8.1986.

5. Revenue challenged the aforesaid deletions by way of appeal before the Tribunal. The Tribunal has confirmed the order of CIT (Appeals) deleting the additions on account of suppressed production of oil and oil cakes.

6. Mr.B.B.Naik, learned Standing Counsel appearing on behalf of the revenue submitted that during the year under consideration the yield of oil had gone

down to 28.13% as against 28.83% in the preceding year, whereas the quality allowance received by the assessee during the year towards inferior quality of groundnut was comparatively less than the preceding year. Similarly there was exceptional increase in the oil cakes production : this year the production was 51.75% as against 43.80% in the immediately preceding year. That considering direct nexus between the production of oil and oil cakes, higher percentage of oil cakes production during the year under consideration supported the conclusion of the Assessing Authority that the assessee had suppressed production of oil and oil cakes. He, therefore, urged that the addition made by the Assessing Officer was required to be restored answering the question raised at the instance of the Commissioner in favour of the revenue.

7. Mrs.Soparkar, learned Advocate appearing on behalf of the assessee submitted that the assessee had maintained regular Books of Accounts showing complete quantitative details in relation to production of oil and oil cakes and no specific

discrepancy had been found by the Assessing Officer in the record maintained by the assessee. That Books of Accounts duly supported by vouchers and records of production and stock had been produced before the Assessing Officer. It was submitted that the entire addition was based on presumption that as there was excess production of tins there must be suppressed production of oil and oil cakes. Attention was invited to the surprise checks made by Civil Supplies Department as well as examination of record by the Excise Department and acceptance of declared turnover by Sales Tax Department to contend that there was no case for any addition on account of undisclosed production of oil and oil cakes.

8. The Tribunal has upheld the findings recorded by CIT (Appeals) for deleting the additions on account of undisclosed income on account of suppressed sales of oil and oil cakes. It has been found by the Tribunal that it is an undisputed fact that regular Books of Accounts have been maintained by the assessee along with records of stock as

required under the provisions of the excise law. That correctness of book results relating to production of oil and oil cakes has been accepted by the Income Tax Authorities in past. The production of oil and oil cakes as well as stock records have been examined by the Excise Department and the Sales Tax Department and neither of those authorities, who are also revenue authorities, have found any discrepancy in the records maintained by the assessee. Similarly, the Tribunal has taken cognizance of the fact that the surprise visits by the officials of Civil Supplies Department have revealed that there were no irregularities in the maintenance of stock and the physical stock and the stock records tallied and were found in order. The Tribunal has also found that percentage of yield of oil and oil cakes would depend on the quality of groundnut and the quality of groundnut was likely to fluctuate/vary on the basis of various factors like the season during which purchases were made, the area from where the purchases were made, the extent of moisture content in the groundnut which in turn would

depend upon the extent of rain, and also technical efficiency of the crushing process in each case. The Tribunal has further found that the Assessing Officer has not pointed out any specific omission or suppression in the Books of Accounts maintained by the assessee. Nor has the revenue disputed the fact that in case of various other oil mills, the percentage of production of oil and oil cakes during the year under consideration is less when compared to the percentage of production in case of the assessee. On the basis of these factors the Tribunal has came to the conclusion that the CIT (Appeals) was justified in deleting the additions on account of alleged suppression of unaccounted sales of oil and oil cakes of Rs.54,23,457/-, and Rs.12,44,130/- respectively.

9. The aforesaid findings recorded by the Tribunal are supported by the evidence which is available in the Paper Book and no material has been pointed out so as to take a different view of the matter. The Tribunal has taken into consideration all relevant

facts for the purpose of adjudicating the issue as to whether there was any suppressed production of oil and oil cakes resulting in sales outside books and consequently undisclosed income. In the result, it is not necessary to reiterate the reasons and the factors which have weighed with the Tribunal while deleting the additions on this count and there being no infirmity in the order of the Tribunal in relation to this issue no interference is called for.

10. The question referred at the instance of the revenue is therefore answered in the affirmative i.e., in favour of the assessee and against the revenue holding that the Tribunal was right in law in deleting the addition of Rs.54,23,457/- made on account of suppressed production of 28,284 tins of oil and also Rs.12,44,130/- on account of suppressed production of 678 tons of oil cakes.

11 Coming to the reference at the instance of the assessee, though as many as six questions have been referred the issue is whether the assessee had

manufactured 28,284 tins and failed to show the said production in the accounts maintained by the assessee.

12 The Assessing Officer records that the assessee has maintained a stock register showing day to day consumption and production of tins. The register reflects the daily receipts, consumption, production and balance and is certified and signed by the managing partner of the assessee firm. However, according to the Assessing Officer scrutiny of purchase bills reflects that the purchases were of unsoldered tin sets known as component sets comprising of four pieces, one each for the top and bottom and two pieces for body panels. That on the basis of examination of the purchase bills, according to the Assessing Officer, such component sets have been purchased on the basis of number of sets and not on the basis of weight in kilograms. Thus, according to the Assessing Officer, the stock register is false when considered in light of the purchase bills because the stock register mentions the receipts, consumption, production and

balance stock in weight. The Assessing Officer, therefore, after examining few bills held that the purchases of the component sets were shown on the basis of rate or price per set and the purchases of component sets were not reflected by the rate of per kilogram. That for making a complete tin from a component set four pieces of the set were required to be soldered and a clip, kadi and round lid was required to be affixed. The Assessing Officer therefore came to the conclusion that during the year under consideration the assessee had purchased 2,73,047 component sets, after considering the opening balance of component sets and deducting therefrom closing stock, 2,76,272 tins ought to have been produced against which the assessee had shown production of 2,47,988 tins. He therefore worked out that 28,284 tins were produced but the production was suppressed. The detailed working is as under :

Opening balance of component sets.	9,120
Add : Total number of component sets purchases from twenty different manufacturers as shown above	2,73,047
	2,82,167
Less : Closing stock as discussed above.	5,895
Balance that should have been accounted as production.	2,76,272
Less : Production and consumption of tins actually accounted for	2,47,988
Balance of production of tins suppressed	28,284

13 The Assessing Officer while doing so has not accepted the explanation tendered by the assessee that though the purchase bills reflected purchase of component sets at the rate per set, in fact the bills were so prepared considering the legal impediment that tin plates could be sold only to small scale manufacturers as per government order and hence the sets and the rates were mentioned in numbers though purchases were in fact on basis of weight. The assessee in support of such contention had placed on record various evidences from its own possession,

from manufacturer of the tins, certificates from suppliers etc. The Assessing Officer had also examined two of the suppliers but thereafter recorded that there was nothing to suggest in the statements that the purchase bills which were very specific and clear as to the nature of goods supplied to the assessee were in any manner incorrect. It is further stated that from the chart supplied by the assessee in almost all cases each component set was weighing about 1000 grams or slightly more, after process of soldering and affixing of clip, kadi and round lid weight would go upto 1040 grams or slightly more. He therefore rejected the assessee's explanation that the weight of a complete tin would workout to 1080 to 1100 grams and it was not necessary that from each component set one tin would be produced. He therefore worked out the value of 28,284 tins alleged to be suppressed production by applying average rate of Rs.13.25 ps. per tin totalling to Rs.3,74,763/- and added the same as undisclosed income in hands of the assessee.

14.The assessee carried the matter in appeal before CIT

(Appeals). The CIT (Appeals) after considering the explanation tendered by the assessee caused inquiry to be made through the Inspector to ascertain the facts. It is recorded that as per result of the inquiry the net weight of oil per tin would be 15.9 kgs., and weight of new tin would be from 965 grams to 1000 grams but the weight of old tins used to vary between 1 kg. to 1.18. kg. The CIT (Appeals) has further found that some of the bills of M/s. Raj Tin Factory, M/s.Taheri Tin Factory and M/s.Nilam Tin Factory as well as all the four bills of M/s.Girishchandra & Co. also mentioned weight of the components in kilograms. It was further found by CIT (Appeals) that the statement, including cross examination of the suppliers along with certificates clearly revealed that number of component sets was mentioned not by counting but on an estimated basis because what the party had sold to the assessee was tin plates as claimed by the assessee and not the number of component sets. He has further found that " the number of component sets has been mentioned on estimate to circumvent the difficulties in

selling the tin plate". The CIT (Appeals) has further recorded that the weight per component set varied between 1000 to 1100 grams which was well within the vicinity of weight per set as reported by the Inspector vide his report dated 1.8.1986. However, he found that the weight per component set in the case of goods supplied by M/s.Girishchandra & Co. came to 908 grams which was absurdly low and hence he estimated that M/s.Girishchandra & Co. would have supplied 46,455 sets @ 1000 grams per component set and accordingly granted reduction towards cost of 4716 tins on this count while confirming the balance number of tins as being undisclosed production.

15. Both the assessee and the revenue carried the matter in appeal before the Tribunal. The assessee against retention of addition to the extent of 23,568 tins as being suppressed production and the revenue against relief to the extent of 4716 tins granted by CIT (Appeals). The Tribunal for the reasons stated in its order dismissed the assessee's

appeal on this count and allowed revenue's appeal restoring addition as made by the Assessing Officer holding that there was suppressed production of 28,284 tins. So far as valuation was concerned the Tribunal directed the Assessing Officer to adopt the rate which was applicable for production of the other tins as per Books of Accounts instead of applying average rate and restored the matter to Assessing Officer for this limited exercise.

16. Mrs. Soparkar, learned Advocate appearing on behalf of the assessee invited attention to the explanation tendered by the assessee vide letters dated 14.11.1984, 26.2.1985 and 11.3.1986 which were accompanied by various enclosures to submit that there was adequate material on record to show that the purchases were on the basis of weight in kilograms and not on the basis of number of component sets. She invited attention to various certificates issued by the suppliers as well as other similarly situated purchasers to emphasise this fact that though the bills reflected purchases

to be by number in fact the purchases were on the basis of weight. Referring to various tables and charts coupled with the statements of the suppliers she contended that the entire basis of addition viz., one tin for every component set was erroneous considering the possibility of variance as to weight, thickness of tin plate etc., and that it was not always possible to match the number of component sets with the number of tins produced. That the Tribunal had erred in proceeding on the footing that the material supplied by each of the suppliers, who were 20 in number, would be of identical quality and hence, the end result in working out so called suppressed production was not supported by actual facts and figures. That the addition was based on various hypotheses and conjectures. She therefore urged that the Tribunal's order on this issue was perverse in as much as it had ignored relevant material which was available on record and proceeded on surmises and conjectures. It was therefore submitted that no addition on this count was called for.

17. Mr.Naik appearing on behalf of revenue supported the order of the Tribunal and submitted that both the Assessing Officer and the Tribunal had taken into consideration purchase invoices which were primary documents; the said material was produced by the assessee itself and the assessee could not be permitted to turnround and state that the said invoices were not correct. That even if the assessee wanted to dislodge the said evidence the onus was on the assessee to prove that the invoices did not reflect correct position, and on appreciation of evidence the Tribunal had came to the conclusion that the assessee had failed to discharge the said onus. He therefore urged that no interference was called for in the order of the Tribunal.

18. As can be seen from the impugned order of the Tribunal after recording the fact that the assessee has submitted certificates from various suppliers during the course of assessment proceeding and certificates of brokers to corroborate its

contention that the component sets of tin plates were purchased on the basis of weight and number of component sets were mentioned in the respective invoices to comply with the relevant regulation relating to sale of tin plates, the Tribunal brushes aside the said evidence by observing : “All such certificates or statements of subsequent dates cannot over ride the clear and unambiguous description given in the respective purchases invoices”. The Tribunal thereafter observes that the correctness of the various purchase invoices in respect of component sets has not been questioned or disputed by the assessee or by the suppliers. It further reiterates that in view of clear description given in most of the purchase bills it was not inclined to accept the assessee's contention that such tin plates were in fact purchased on the basis of weight and the number of component sets were mentioned in the purchase invoices merely to comply with the relevant regulation in force relating to sale and supply of tin plates. Thereafter, the entire order of the Tribunal

proceeds on the footing that normally each component set should result in manufacture of one complete tin container for holding excess tin production to the tune of 28,284 tins worked out by the Assessing Officer. The Tribunal enters into an elaborate exercise on the presumption that weight of each set would be 1000 grams. Applying the same reasoning the Tribunal also reverses the partial reduction granted by CIT (Appeals). The only relief that the Tribunal has granted is to work out the actual quantum of addition by applying the manufacturing cost per tin by adopting the average cost price at which the other manufactured tins were available to the assessee in place of the cost price adopted by the Assessing Authority.

19. The least that was expected from the Tribunal was to discuss the inherent strength of the certificates issued by the suppliers and other persons, consider the statements and the cross-examination of the suppliers which have come on record and discuss other evidence. The Tribunal has

singularly failed to discuss the merits of the said evidence. Except for stating that the said evidence like certificates, statements etc., have come on record subsequently no reason is assigned as to why the said evidence is not acceptable. The entire premise is fallacious. The Tribunal has failed to appreciate that in fact the Assessing Officer had called upon the assessee to make submissions with regard to tin plates account, modality of manufacture of tins and furnish information in this regard. It is in this context that the assessee has made detailed submission vide communication dated 14.11.1984 addressed to the Assessing Authority. The basic explanation, and the same has remained consistent all throughout, tendered by the assessee is reflected by paragraph No.1 of communication dated 14.11.1984 which reads as under :

> "1. Present Govt. policy is to issue tinplate quota only to the backwards area, in small scale sector, that is why we being a D.G.T.D.unit cannot get tin plates directly from tin plate manufacturers and have to buy it from local market, either in form of component or tin plate."

20. In the said communication it is explained that the assessee is required to obtain purchase bills showing purchase of component sets in number but in fact the purchases are in weight and even the delivery is in terms of weight. This becomes clear from paragraph No.5 of the said communication which reads as under :

> "5. The components or tinplates are always taken delivery in terms of weight even if the purchase vouchers are in terms of component sets. This fact is justified looking to the following points.
>
> 1. It is difficult to count because they are numbering in more than millon.
>
> 2. The edge of tinplates as well as that of components sets are as sharp that while handling them in piece to piece counting there are possibilities of injuring the persons involved. This way it is rather impossible to count and to take delivery. So the practice is to get them weighed and we maintain the record on every stage in terms of weight only."

20.1 It is an admitted position that in support of the aforesaid submission the assessee was

called upon to adduce evidence and this has been done under cover of letter dated 26.2.1985.The assessee submitted the following evidences :

1 Certificate of Tin containers Manufacturers Association.

2 Hand operated Tin Containers Manufacturers Association.

3 Certificate of Taheri Tin Factory.

4 Certificate of Girishchandra & Co.

5 Certificate of Indian Extraction Pvt. Ltd.

6 Certificate of Mahendra Oil, Cake Ind. Pvt. Ltd.

7 A chart in respect of details of Tin Plate and components showing the name of the seller Bill number date, Quantity rate per ton, Bill amount, Factory, Avak gate pass number, Avak gate pass date, weight bridge receipt number, weight bridge, weight Broker name.

8. Copies of Bills of brokers.

9. Certificates in the form of letters and

bills from the brokers namely Motichand & Co. and Dalal Jayantilal Dayalal.

We also rely upon the evidence filed during the course of 1981-82 assessment proceedings.

We also maintain a soda book for purchase of tin plates and Tin Components.This indicates that purchase were made on the basis of weight. Soda book is produced herewith".

21.The Court has gone through the certificates produced and it is necessary to note that the signatory of the certificate issued by Tin Containers Manufactures Association (Annexure-W Pg.224) was the partner of one of the suppliers viz., partner of M/s.Shah Tin Factory, Jamnagar. The said gentleman appeared before the Assessing Officer when summoned and his statement was recorded under Sec.131 of the Act on 5.3.1986. He has also been cross examined by the Advocate of the Assessee on 10.3.1986. When one reads the entire statement including cross-

examination it becomes evident that the sale transaction with the assessee is entered into by the said supplier through broker, the delivery of component sets has been given after weighing on weighbridge and the rate of the component sets is fixed per ton but has been recorded in the bill @ per set. It is further stated categorically in reply to question No.5 that the sets cannot be counted but weighed on weighbridge and bill is given accounting it in sets. It is further stated that weight of one set is shown as 1 kg. on an approximate estimated basis. Weighment slips of the weighbridge were shown to the deponent and the correctness thereof has been accepted; it is further accepted that brokerage is paid on the basis of weight. Question No.9 and answer thereto are most material. The deponent was asked that when the transactions were on the basis of weight, delivery was on the basis of weight, brokerage was also paid on the basis of weight, what was the necessity to show sale in the bills by number of component sets. Free English translation of the answer is “we

cannot sell tin plate and can sell after making component sets and can sell tin containers. Therefore, we should give delivery after making sets and therefore mention of sets has been made in bill." Similarly questions and answers No.16 to 18 also reflect that there is every likelihood of variation in the thickness of the plates resulting in different weight of manufactured tins.

22. The Assessing Officer has referred to this statement and the evidence but thereafter proceeded on the footing that he prefers one set of evidence against another, viz., the purchase invoice as against the statement and supporting evidence. However, it is unfortunate that the Tribunal has not even cared to discuss the evidence which is relevant and has material bearing on the controversy. At the cost of repetition, it is required to be stated that the Tribunal has brushed aside the said evidence by stating that the same was tendered at a later stage during assessment proceeding without appreciating that it was only when the assessee was called upon

to prove its stand that the necessity arose to produce evidence in support of its explanation.

23. The Assessing Officer also examined one Shri Nalin Sampatlal Mehta, Supervisor of another supplier, and the statement including cross-examination of the said gentleman is available on record. It is not necessary to repeat the gist of the said statement. Suffice it to state that the said statement when read as a whole supports the plea of the assessee.

24. As the record reveals : the assessee also produced (i) the weighment slips of the goods when they were sent for manufacture, (ii) Weighment slips when the manufactured goods were received back by the assessee, (iii) gate passes which were issued at the time of dispatch and receipt. The Tribunal has however, not taken the same into consideration and no reason is assigned for ignoring the same. May be that an isolated piece of evidence may not appear to have any importance, but when the entire material on

record is taken into consideration the cumulative effect of the same would definitely go to show as to which of the two versions – that of the concerned authority or of the assessee – becomes acceptable. In the facts of the present case, it is apparent that when the entire material is taken into consideration it tilts the balance in favour of the version canvassed by the assessee : explanation tendered by the assessee becomes acceptable. One would have thought that the Tribunal, which is the final fact finding authority, would have at least taken into consideration the evidence on record, discussed the same and found after appreciating the same as to why a particular piece of evidence was or was not acceptable. The position in law is well settled. That the Tribunal's order when read as a whole must reflect what was the controversy before it, what were the issues which fell for consideration, what was the evidence pro and contra in relation to such issues, and must reflect application of mind in this regard by assigning reasons for acceptance or otherwise of the evidence

placed before it. The impugned order of the Tribunal suffers from legal infirmity. It has chosen to accept one piece of evidence disregarding all other material on record and that too without assigning any valid reason for discarding such material.

25. In the case of *Sreelekha Banerjee and others Vs. Commissioner of Income Tax 1963 (14) ITR 112 (SC),* the Apex Court was called upon to decide as to whether the high denomination notes encashed by the assessee formed part of cash balance viz., cash on hand as reflected in the Books of Accounts and in this context the Apex Court has laid down the approach which the authorities are required to adopt while determining as to on whom the burden of proof lies, as to how the explanation of the assessee must be appreciated and the principles applicable for acceptance or rejection of the explanation. It is held that if the explanation shows that the receipt was not of an income nature the department cannot act unreasonably and reject that explanation to hold that it was income. If, however, the explanation is

unconvincing and one which deserves to be rejected the department can reject and draw the inference that the amount represents income either from the source already disclosed by the assessee or from some undisclosed source. It is further stated that:

> “The very words 'an undisclosed source' show that the disclosure must come from the assessee and not from the department. In cases of high denomination notes, where the business and the state of accounts and dealings of the assessee justify a reasonable inference that he might have for convenience kept the whole or a part of a particular sum in high denomination notes, the assessee prima facie discharges his initial burden when he proves the balance and that it might reasonably have been kept in high denomination notes. Before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some

> information or evidence which it has in its possession. The department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof. It is within the range of these principles that such cases have to be decided". (emphasis supplied).

26. Applying the aforesaid principles if the order of the Tribunal is tested it becomes abundantly clear that it has merely rejected unreasonably a good explanation but that by itself does not convert good proof into no proof. Once it is found that Tribunal has ignored relevant material on record it is not possible to state as to what extent its mind was vitiated while arriving at the final conclusion and in the circumstances the order cannot be permitted to stand in so far as this issue is concerned.

27. There is one more aspect of the matter. The Tribunal has failed to appreciate the following observations made by the Assessing Authority in the

assessment order:

(a)In paragraph No,33 of the order it is stated “now the tins for 16 kgs oil are not in use from 1.4.1985 and, therefore, the assessee's story of weight cannot be out-right rejected;”

(b) In paragraph No.36 the Assessing Officer states, “the next point is about the utilization of the tins. There are two possibilities, one is, that the assessee may have sold the empty tins and the other is that the tins were used for selling the unaccounted oil. Obviously, the assessee is not a dealer in tins. It is not the business of the assessee to buy the tins and sell the tins”;

(c) In paragraph No.39 it is stated “Therefore, there is every probability that the assessee has sold away the concealed tins for selling the unaccounted oil”;

(d) In paragraph No. 40 it is further stated :“It is quite logical to believe that the unaccounted tins were utilized for selling the unaccounted oil because the assessee is

the consumer of tins and not a dealer thereof. Considering the facts and circumstances of this case, I hold that the assessee has utilized the suppressed tins for selling the unaccounted oil".

28. The aforesaid observations go to show that the Assessing Authority has proceeded on the premise that there was production of tins outside books for the purpose of selling unaccounted oil. Once the Tribunal had found after appreciating evidence on record that no case was made out for making any addition on account of any suppressed sales of unaccounted oil and oil cakes it ought to have approached the issue of alleged suppressed production of tins in light of the basic case of the Assessing Authority, namely, the assessee was not a dealer in tins and it was not even alleged that the said tins were sold away. This becomes all the more material when one bears in mind that the Assessing Authority has categorically found that such alleged suppressed production of tins viz. 28284 tins were not reflected in the closing stock.

The question that the Tribunal was required to pose to itself was as to whether revenue was justified in making addition on such count especially when Tribunal itself had recorded in no uncertain terms that there was no production of undisclosed oil and oil cakes. The Tribunal having failed to address itself in this regard would go to show as an additional factor that the explanation tendered by the assessee was not unreasonable, was not fanciful and was duly supported by evidence and material on record and the Tribunal failed to not only appreciate but even consider the said evidence.

29. It is necessary to record that the assessee had made a specific grievance before CIT (Appeals) to the effect that though statement of the concerned person of M/s. Girishchandra & Co. had been recorded by the Assessing Authority , despite a specific request, no opportunity to cross-examine the said party was offered, and to the contrary the Assessing Authority had relied upon the said statement. The CIT (Appeals) has mentioned the aforesaid objection

in paragraph No.7.1 of his order. The Tribunal has also recorded the grievance in paragraph No.10 of its order. However, both the authorities have thereafter not appreciated the significance of the grievance made while confirming the addition in Tin Account. This factor would also go to vitiate the impugned order of Tribunal.

30. In the view that the Court is taking it is not necessary to enter into a detailed discussion of the procedure adopted to work out the so called deficit of manufactured tins as per Books of Accounts. All the authorities have proceeded on the presumption that firstly, each component set would result in one manufactured tin container; secondly, each component set would yield a tin container of equal weight. Though, both the premises, primafacie, do not appear to be justified, in view of what is stated hereinbefore it is not necessary to enter into any further discussion on this aspect of the matter.

31. In the result, on the facts and in the

circumstances of the case, the Tribunal was not justified in rejecting the evidence in the form of certificates and statements filed during the course of assessment proceedings; it was also not justified in holding that purchases of tinplates for manufacture of tins were not made on the basis of weight but on the basis of number of component sets; the consequential finding that there was suppression of production of 28,284 tins by the assessee and the value thereof was to be added in the income of the assessee also cannot be justified on the facts of the case.

32. Accordingly, question Nos. 1 to 5 raised at the instance of the assessee are answered in the Negative i.e., in favour of assessee and against revenue. Similarly, for the reasons stated hereinbefore question No.6 at the instance of the assessee is answered in the affirmative i.e. in favour of the assessee and against revenue.The reference stands disposed of accordingly with no order as to costs.

Sd- Sd/-

(D.A.Mehta,J) (H.N.Devani,J)

m.m.bhatt